

July 23, 2025

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY: MGR
DEPUTY

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

Matthew Andrew Garces,
Plaintiff-Appellant,
Pro Se Litigant

v.

Andy Rossbach, Rossbach Construction, 523 RE LLC,
Defendants-Appellees.

Case No.: 25-50531

(Appeal from 5:25-CV-00441-JKP-HJB, W.D. Tex.)

**EMERGENCY MOTION TO STAY WRIT OF POSSESSION AND
EVICTION PENDING APPEAL**

Comes now Matthew Andrew Garces, Plaintiff-Appellant ("Tenant"), *pro se*, and urgently moves this Court for an emergency stay of the Writ of Possession and Eviction issued by the Bexar County Justice of the Peace Precinct 4 Court. Tenant faces imminent, irreparable harm from eviction due to: (1) catastrophic disruption of critical spinal surgeries; (2) loss of ADA/FHA-mandated accessible housing; and (3) violation of due process rights. This Motion satisfies all four factors under *Nken v. Holder*, 556 U.S. 418 (2009), and is supported by federal law (FHA, ADA), Texas property law, and the Declaration attached hereto.

I. INTRODUCTION & URGENT RELIEF REQUESTED

Tenant is a disabled registered nurse with documented spinal injuries requiring **two staged surgeries** (see Medical Plan, pp. 2-3). Eviction would:

- **Cancel life-altering surgeries** (ORIF hand surgery scheduled within 7-10 days; revision lumbar microdiscectomy);
- **Terminate ADA/FHA accommodations** (accessible housing critical for mobility post-surgery);
- **Cause homelessness during medical crisis**, violating due process (**Fuentes v. Shevin**, 407 U.S. 67 (1972)).

REQUEST: Immediate Stay of Eviction pending appeal under Fed. R. App. P. 8(a)(1)(A).

II. FACTUAL & PROCEDURAL BACKGROUND

A. Critical New Facts

1. Medical Emergency:

- **Unstable Cervical Spine:** C1-C2 ligament injury with "increased signal" risking spinal cord injury (Medical Plan p. 3).
- **Acute Hand Fracture:** 4th metacarpal displacement worsened by CPR (06/17/2025); ORIF required within 3 weeks to avoid malunion.

- **Lumbar Nerve Compression:** 9x13mm disc extrusion compressing S1 nerve, causing radiculopathy and foot dysfunction.
- **Surgical Sequence Disruption:** Eviction cancels Phase 2 surgical timeline (ORIF → Lumbar → Cervical → Foot), causing permanent disability.

2. Retaliatory Timeline:

- 04/05/2025: Tenant's slip-and-fall due to unrepaired flooring (Ex. B).
- 04/19/2025: Tenant files renters insurance claim (Lemonade # LP1173C3C81).
- **04/21/2025: Landlord issues 7-day eviction notice (Ex. C) – 2 days post-claim.**

B. District Court Proceedings

- **04/22/2025:** Tenant files federal suit (FHA/ADA/retaliation claims).
- **04/22/2025:** Tenant files TRO (denied without hearing).
- **Eviction Scheduled:** July 27, 2025 – Tenant faces removal by U.S. Marshals.

III. LEGAL STANDARD FOR STAY PENDING APPEAL

A stay is warranted if:

1. **Likelihood of Success on Merits;**
2. **Irreparable Harm without Stay;**
3. **No Substantial Harm to Opposing Party;**
4. **Public Interest Favors Stay.**

Nken, 556 U.S. at 426.

IV. ARGUMENT

A. Likelihood of Success on Merits

1. FHA/ADA Violations (42 U.S.C. § 3604(f)(3)(B); 42 U.S.C. § 12182):

- Landlord refused reasonable accommodations for mobility disability (uneven floors, broken windows) despite inspection report (Lonestar, 10/03/2024).
- **Key Authority:** *Groome Res. Ltd. v. Parish of Jefferson*, 234 F.3d 192 (5th Cir. 2000) (failure to accommodate violates FHA).
- ADA applies to common areas of multi-unit housing. *See PGA Tour, Inc. v. Martin*, 532 U.S. 661 (2001).

2. Retaliation (Tex. Prop. Code § 92.331; 24 C.F.R. § 100.400(c)):

- Eviction notice issued **2 days after** insurance claim, creating presumption of retaliation.

- **Key Authority:** *Texas Dept. of Hous. v. Inclusive Cmtys. Proj.*, 576 U.S. 519 (2015) (retaliation actionable under FHA).

3. Breach of Warranty of Habitability:

- 50+ safety violations (mold, structural defects) render unit uninhabitable.
- **Key Authority:** *Kamath v. Volvo Trucks N. Am.*, 867 F.3d 595 (5th Cir. 2017) (breach where defects threaten safety).

B. Irreparable Harm

1. Medical Catastrophe:

- Eviction disrupts surgical schedule, causing:
- Malunion of hand fracture (permanent disability);
- Permanent nerve damage from untreated S1 compression;
- Spinal cord injury risk from unstable C1-C2 ligaments.
- **Key Authority:** *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432 (1985) (denial of housing to disabled is irreparable harm).

2. Loss of ADA/FHA-Mandated Housing:

- Unit is ADA-adapted for post-surgery recovery. Homelessness would force Tenant into non-compliant housing.

- **Key Authority:** *Wisconsin Cmty. Servs. v. City of Milwaukee*, 465

F.3d 737 (7th Cir. 2006) (eviction defeating ADA

accommodations is irreparable).

3. Inability to Prosecute Appeal:

- Homelessness would cripple litigation efforts. *Goldin v. Bartholow*,

166 F.3d 710 (5th Cir. 1999) (eviction moots appeal).

C. No Substantial Harm to Landlord

- Landlord suffers only financial harm (past-due rent), compensable by damages. *See In re First S. Sav. Ass'n*, 820 F.2d 700 (5th Cir. 1987).

D. Public Interest Favors Stay

1. Upholding civil rights statutes (FHA/ADA);
2. Preventing homelessness of disabled persons;
3. Preserving judicial integrity. *See Rucker v. Davis*, 237 F.3d 1113 (9th Cir. 2001) (enjoining eviction of disabled tenant).

V. CONCLUSION

Tenant faces annihilation of constitutional and statutory rights without a stay. Immediate relief is required to prevent irreversible medical harm, homelessness,

and violation of federal disability law. Tenant respectfully requests:

1. **Emergency Stay of Eviction** pending appeal;
2. **Expedited Hearing** on this Motion.

VI. VERIFICATION

I, Matthew Andrew Garces, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing facts and arguments are true and correct to the best of my knowledge, information, and belief.

DATE: July 23, 2025.

Respectfully submitted,

/s/ Matthew Andrew Garces

Matthew Andrew Garces, RN, CEO, *Pro Se Plaintiff-Appellant*

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CERTIFICATE OF SERVICE

I hereby certify that on this July 23, 2025, a true and correct copy of the foregoing **EMERGENCY MOTION TO STAY WRIT OF POSSESSION AND EVICTION PENDING APPEAL** was served electronically via the Court's CM/ECF system via electronic submission for pro se filers' dropbox upon all counsel of record and email to rossbachconstruction@gmail.com.

/s/ Matthew Andrew Garces

Matthew Andrew Garces, RN, CEO, *Pro Se Plaintiff-Appellant*

ATTACHMENT: DECLARATION OF MATTHEW ANDREW GARCES

I, Matthew Andrew Garces, declare under penalty of perjury:

1. I require four staged surgeries (ORIF hand, lumbar microdiscectomy, cervical repair, foot cheilectomy).
2. Eviction will terminate my housing ADA accommodations, making post-surgery recovery impossible.
3. I have been unable to establish new medical care due to eviction threat.
4. My April 2025 rent delay resulted from injury-related financial strain.
5. I will suffer irreversible harm if evicted during surgical sequence.

Date: July 23, 2025.

/s/ Matthew Andrew Garces

Matthew Andrew Garces, RN, CEO, *Pro Se Plaintiff-Appellant*